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No. 08-1530

Supreme Court, U.S
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In The
Supreme Court of the United States

MATTHEW SIRMONS and JAMES MILLS,
in their individual capacities,

Petitioners,

v.

MELANIE WILLIAMS,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When Deputies Matthew Sirmons and James Mills stopped the pregnant Melanie Williams for running a red light, she immediately informed them she was pregnant, bleeding, and on her way to the nearby hospital for emergency care. Were Sirmons and Mills violating clearly-established law when they later tackled and arrested Williams at the hospital despite her need for emergency medical care, or were these law enforcement officers protected by qualified immunity *despite* the absence of probable cause for arrest?

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CONSTITUTIONAL AND FEDERAL STATUTORY PROVISIONS INVOLVED

Respondent Melanie Williams filed suit seeking damages, in part, for the Petitioners' violation of her Fourth Amendment right to be free from unreasonable search and seizure, as effectuated by 42 U.S.C. § 1983.

STATEMENT OF THE CASE

The law controlling this case is unremarkable. The facts, on the other hand, are outrageous. Because the lower court decision did not create a split of authority between or among the circuits, and no other reason to grant the Petition for Writ of Certiorari exists, this Court should deny the Petition for Writ of Certiorari *instanter*.

The Petitioners, Deputies Matthew Sirmons and James Mills, wrongly arrested and assaulted Respondent Melanie Williams. Sirmons and Mills intransigently refuse to concede the offensiveness of their misconduct, misconduct so outrageous the Eleventh Circuit deemed it "reprehensible." (Pet. App. A at 17a.)[1] In order to defend their reprehensible misconduct, Deputies Sirmons and Mills attempt to

[1] Citations to the district court record will read (Doc. ___ at [page number]) and citations to the lower court opinions will read (Pet. App. ___ at [page number]). Citations to the Petition will read (Pet. ___ at [page number]).

twist an unremarkable lower court decision into a decision that they describe as a "first . . . in our nation's history[.]" (Pet. at 7.)

To the contrary, the lower court's decision simply reiterates longstanding federal law holding that probable cause is "judged not with clinical detachment but with a common sense view to the realities of life." *Marx v. Gumbinner*, 905 F.2d 1503, 1506 (11th Cir.1990). The Eleventh Circuit concluded that no reasonable officer acting with common sense could have concluded that probable cause to arrest existed when Sirmons and Mills arrested and used force to effectuate Williams's arrest. In doing so, the Eleventh Circuit affirmed the district court, which had reached that same conclusion. (Pet. App. B at 35a.)

At bottom, two different courts have concluded that this arrest was unsupported by common sense. This Court should reject Sirmons and Mills's suggestion that the Eleventh Circuit's decision to require law enforcement officers to act with common sense "places officers in the untenable position of having to speculate about affirmative defenses." (Pet. at 3.) Sirmons and Mills did not need to speculate. Williams told them she was pregnant and bleeding and seeking emergency care to treat her condition. Therefore, her subsequent conduct did not rise to the level of even arguable probable cause for a crime having been committed. Because no serious review of the facts could lead to a different conclusion, the Petition for Writ of Certiorari should be denied.

1. Facts Giving Rise to Case

Williams acknowledges that the majority of facts described by Sirmons and Mills come straight from the Eleventh Circuit's opinion below. Nevertheless, Sirmons and Mills added facts which are disputed or slanted – and labeled them "undisputed" – and also omitted facts which are necessary for the Court to make a fair determination of whether to hear this case on the merits. Therefore, Williams has re-written the facts in a manner that tracks Sirmons and Mills's Petition but also corrects or adds facts to render the facts before the Court more accurate. These supplemental facts include citations to the record before the district court, or citations to the district court opinion.

On a late Sunday afternoon,[2] May 8, 2005, Williams, seven and a half months pregnant with her first child (Doc. 28-1 at 74-75), began bleeding vaginally. Understandably, Williams feared she could lose her unborn child. (Doc. 28-1 at 79.) She did not know it at the time, but she had begun pre-term labor. (Doc. 28-2 at 1.) Upon recognizing the seriousness of her bleeding that late afternoon, she immediately left her home and began driving to the hospital with which her obstetrician had a relationship. (Pet. App. B at 20a.) En route, she dialed 911.

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[2] Although the Eleventh Circuit opinion states that Williams noticed she was bleeding "in the early hours" of May 8, 2005, that is factually incorrect. Williams noticed the bleeding in the late afternoon. (Doc. 28-1 at 79.)

The 911 operator asked if she wanted to pull over and await an ambulance, but Williams declined because she believed she would make it to the hospital sooner continuing on herself. (Pet. App. B at 20a.)

In her haste to receive medical attention, Williams drove through one red light. In turn, Sirmons and Mills signaled Williams to stop her vehicle. Williams stopped; this traffic stop took place less than one mile from her hospital. After Sirmons approached her car, Williams explained to him she was pregnant, bleeding, and on her way to the hospital. Sirmons appeared unconcerned and requested Williams's driver's license and proof of insurance and inquired whether she owned the car she was driving. After receiving the requested documents, Sirmons returned to his patrol car to investigate Williams's identity and issue her a ticket. Meanwhile, Williams, afraid she would lose her baby, drove directly to the hospital emergency vehicle bay for emergency care. (Pet. App. B at 21a.) Sirmons and Mills followed.

As Williams exited her car to seek emergency medical treatment, Sirmons grabbed her arm and told the pregnant and bleeding Williams that she was going to jail. Williams pulled free, ran towards the emergency room, and yelled, "Help! I'm pregnant and bleeding." Sirmons and Mills suggest to this Court that a video of this scene shows a rapidly sprinting woman "who is not visibly pregnant." (Pet. at 4.) That assertion is the Petitioners' counsel's non-record-supported *interpretation* of the video – no witness

testified that the video showed a woman "not visibly pregnant." To the contrary, several witnesses in the emergency room affied that Williams was "obviously pregnant" when she ran into the hospital. (Pet. App. B at 33a n.5.)

According to witnesses waiting in the emergency room at the time, Williams ran into the emergency room but stopped at two locked doors, all the while begging for help. (Pet. App. B. at 21a.) At this time, Sirmons jumped on Williams and slammed her to the floor (Pet. App. B at 21a), *slamming her down* with such force that he managed to dislocate his own shoulder in the process. (Pet. App. B at 21a.) For purposes of the record, the Eleventh Circuit and Sirmons and Mills described this as a "fall," however, the district court described Sirmons *slamming* Williams to the ground, consistent with witness affidavits. (Pet. App. B at 21a; Doc. 28-6 at 2; Doc. 28-7 at 2.) Both before and as Sirmons slammed Williams to the floor, a witness heard Williams screaming, "why are you doing this to me," "blood is coming out of me," and "I am pregnant." (Doc. 28-5 ¶14.) Additionally, the witness heard Williams say loudly and clearly, "I tried to tell you what was going on but you would not listen." (Doc. 28-5 ¶15.)

Mills replaced Sirmons on Williams's back and knelt on her back as she pleaded with him to get off of her because of her pregnancy; Mills handcuffed Williams, removed her from the hospital, and placed her in a patrol car in order to take Williams to jail. A nurse insisted, over Sirmons's objection, that she be

allowed to examine Williams. (Pet. App. B 22a n.2.) The nurse explained that Sirmons and Mills showed no interest in Williams's medical condition, even as Williams cried that she was "hemorrhaging" and pregnant. (Doc. 33-1 at 63-64; Doc. 28-8 at 3.) Based on the nurse's examination, the nurse insisted that Williams be admitted to the hospital. Upon full examination, Williams was indeed confirmed to be bleeding and in premature labor. Her physicians successfully staved off the premature labor and Williams spent the next ten days in the hospital, undergoing obstetric care. The baby was born on June 1, several weeks prematurely. (Doc. 28-1 at 25.)

2. District Court Proceedings

Williams sued Sirmons and Mills in their individual capacities for false arrest in violation of her Fourth Amendment rights. Her Amended Complaint also contained a federal civil rights claim against Sirmons and Mills for engaging in excessive force against Williams, and a state law claim for malicious prosecution. Williams sued the Sheriff of Jacksonville in his official capacity ("Sheriff"), alleging a federal *Monell*[3] claim and state law false arrest and battery claims.

The Defendants moved for summary judgment on all claims. The district court granted the Sheriff's

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[3] *Monell v. Dep't of Social Servs. of New York*, 436 U.S. 658, 690, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978).

Motion as to the *Monell* claim, denied his motion as to the state law claims, and denied Sirmons and Mills's motion. (Pet. App. B.) In denying Sirmons and Mills's motion, the district court explained that based on the totality of the circumstances these officers could not have lawfully arrested Williams, and thus any use of force violated the Fourth Amendment. (Pet. App. B at 33a.) The district court also held that even if the arrest was lawful, the force used was excessive. (Pet. App. B at 34a-35a.) The district court explained:

> Under the [*Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989)] framework [ ], the Court concludes that a reasonable officer faced with the circumstances described above could not have believed it lawful and necessary to use against a pregnant woman seeking medical treatment in an emergency room the force Sirmons and Mills allegedly used.

(Pet. App. B at 35a.)

3. Decision of the Eleventh Circuit

Sirmons and Mills took an interlocutory appeal to the Eleventh Circuit based on the district court's denial of their purported entitlement to qualified immunity on these facts. The Eleventh Circuit affirmed the district court's conclusion that Sirmons and Mills's arrest of Williams violated the Fourth Amendment. (Pet. App. A at 11a-12a.) It reversed the district court's conclusion that if the arrest was lawful, then the use of force was excessive. That

latter conclusion is irrelevant for purposes of the Court's review of Sirmons and Mills's Petition for Writ of Certiorari.

In affirming the denial of qualified immunity for the unlawful arrest, the Eleventh Circuit explained that probable cause determinations "involve an examination of all facts and circumstances within an officer's knowledge at the time of the arrest." (Pet. App. A at 9a (citation omitted).) Since Sirmons and Mills *knew* Williams was pregnant and bleeding, they knew that she passed through the red light and rushed to the emergency room *not to break the law*, but so as to seek necessary emergency medical care. Based on the totality of those circumstances, Sirmons and Mills – and any reasonable officer – would have known that there was no probable cause to arrest Williams and therefore no authority to use any force against Williams. In so holding, the Eleventh Circuit relied upon *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir.1999); *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925); *Marx*, 905 F.2d at 1506; and *Radich v. Goode*, 886 F.2d 1391, 1396-97 (3d Cir.1989). Despite the bevy of support for this unremarkable conclusion, Sirmons and Mills asked the Eleventh Circuit to rehear the decision and review the panel decision *en banc*. Not surprisingly, these requests were denied.

REASONS TO DENY THE PETITION

The Eleventh Circuit concluded, like the district court before it, that if officers know a pregnant woman is vaginally bleeding, and know she is seeking emergency care in a hospital because of that bleeding, the officers do not have probable cause to arrest the woman for running a light and driving quickly and directly to the emergency room. Sirmons and Mills submit that such a conclusion is a first for American jurisprudence. Such is hardly the case; rather, the Eleventh Circuit's decision, like the district court's decision before it, is a blow for common sense, and founded on well-settled Constitutional law.

I. THE DECISION BELOW DID NOT CREATE A SPLIT IN THE CIRCUITS, BECAUSE THE DECISION DID NOT CONCLUDE THAT THE OFFICERS HAD PROBABLE CAUSE TO ARREST.

Sirmons and Mills's analysis of the law in this case is in part based on a mistaken interpretation – they submit that the Eleventh Circuit held that despite having probable cause to arrest Williams, they could not do so because of Williams's affirmative defense of necessity. The Eleventh Circuit did not so conclude. The Eleventh Circuit concluded that because Sirmons and Mills had knowledge of facts and circumstances which established the affirmative defense of necessity, Sirmons and Mills *never had probable cause* to arrest because Williams committed no crime. (Pet. App. A at 10a.) It is axiomatic that an

officer without probable cause to arrest cannot so arrest without violating the constitutional rights of the arrestee. *See, e.g., Michigan v. DiFillippo*, 443 U.S. 31, 36, 99 S.Ct. 2627, 61 L.Ed.2d 343 (1979) ("It is not disputed that the Constitution permits an officer to arrest a suspect without a warrant *if* there is probable cause to believe that the suspect has committed or is committing an offense") (emphasis added).

Cases from every circuit, and this Court, support that basic fact of Constitutional law. In the lower court opinion, the Eleventh Circuit matter-of-factly explained how cases from the Sixth Circuit, the Third Circuit, the Eleventh Circuit, and this Court supported its determination. Sirmons and Mills can point to no split of authority on this point; rather, they take general case law of limited applicability to the instant case and twist the lower court's opinion so as to attempt to create a conflict where none exists.

To undergird its well-reasoned conclusion, the Eleventh Circuit began with *Estate of Dietrich v. Burrows*, 167 F.3d 1007 (6th Cir.1999). In *Estate of Dietrich*, law enforcement officers confronted private security officers carrying concealed weapons, and arrested the investigators for violating an Ohio statutory prohibition on carrying concealed weapons. *Id.* at 1011. The arresting officers conceded, at least in part, that they knew the private actors were carrying the weapons as part of their work as security officers. *Id.* Ohio law included an exception allowing concealed carry where the individual carries the

weapon pursuant to his work. *Id.* at 1011-12. Thus, the Sixth Circuit concluded that the arresting officers violated the constitutional rights of the private security officers. *Id.* at 1012.

Despite violating the security officers' Fourth Amendment rights, the law enforcement officers in *Estate of Dietrich* argued they were entitled to qualified immunity because it was not "clearly established" in 1991 that a police officer must analyze the validity of an arrestee's claim of an affirmative defense to a charge of carrying a concealed firearm before effecting an arrest for that crime. *Id.* The Sixth Circuit rejected that argument, explaining that the law enforcement officers were misstating the "relevant inquiry." *Id.* The relevant inquiry was to consider all the facts within the officer's knowledge at the time of arrest, to see if they had facts that rose to the level of probable cause. *Id.* Since the officers knew the private security officers were carrying their weapons pursuant to their employment, the law enforcement officers knew they did not have probable cause to arrest them, in light of the explicit exception in Ohio's concealed carry law. *Id.* at 1012-13.

Sirmons and Mills make the same mistake in the instant case. They suggest that no precedential authority "clearly established" that they had to consider all affirmative defenses before making an arrest in the instant case. That is not the relevant inquiry. The relevant inquiry is, "what did Sirmons and Mills know when they arrested Williams?" The answer is identical to the answer in *Estate of*

Dietrich: they knew that Williams possessed an affirmative defense to their allegations of law-breaking, in that she was pregnant, bleeding, and seeking emergency care as she rushed to the hospital. In light of that knowledge regarding Williams acting out of *necessity (a/k/a duress)*, Sirmons and Mills cannot credibly say they had probable cause to arrest her.

Just as carrying a weapon pursuant to your business is an exception to Ohio's law prohibiting concealed carry of weapons, acting out of necessity or duress is an affirmative defense at Florida law to the crime of fleeing or eluding a police officer. *See Rowley v. State*, 939 So.2d 298, 300 (Fla.Ct.App.2006). Sirmons and Mills knew Williams was pregnant, bleeding, in distress, and on her way to the hospital when they stopped her. They then observed her drive directly to the hospital for that emergency treatment she told them she needed. "For this reason, the deputies lacked arguable – much less actual – probable cause to arrest, even though the circumstances established that Williams met all elements of the offense of fleeing or eluding a police officer." (Pet. App. A at 11a.)

The Eleventh Circuit held that Sirmons and Mills did not have probable cause to arrest Williams. If no probable cause authorizes an arrest, any use of force to effectuate that arrest violates the Fourth Amendment. *See Jackson v. Sauls*, 206 F.3d 1156 (11th Cir.2000). That was the proper principle to apply to the instant case, and that is why qualified

immunity did not protect Sirmons and Mills. In reaching that same conclusion on the facts before it in *Estate of Dietrich*, the Sixth Circuit explained that the principle was so basic that the court could reach all the way back to *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 69 L.Ed. 543 (1925), to support the decision. And the applicability of *Carroll* is obvious: *Carroll* holds in part that probable cause must be based on an examination of all the facts within the arresting officer's knowledge at the time of arrest. *Id.* Simply put, the holding of *Estate of Dietrich*, and the holding below, are unremarkable.

Sirmons and Mills, however, submit that the "practical effect" of *Estate of Dietrich* – and therefore the lower court's decision here – is to require a police officer to "study and understand all the legally cognizable affirmative defenses recognized by a state's laws . . . and then apply them perfectly in the field[.]" (Pet. Br. at 11.) That overstates the import of both cases. These cases simply task the officer with taking "a common sense view to the realities of normal life[.]" *Marx*, 905 F.3d at 1506. When confronted with a security guard carrying a weapon, an Ohio officer is expected to know the basic exceptions to Ohio's concealed carry prohibition. Similarly, when confronted with a pregnant and bleeding woman on her way to the hospital, *a Florida officer is expected to know she needs an escort to the hospital, not to be put under arrest and taken to jail.*

The *Fridely v. Horrighs*, 291 F.3d 867 (6th Cir.2002) case has no bearing on the instant case. The plaintiff in that case contended that the arresting officers *should have known* that he had an entrapment defense to the crime with which he was charged. The Sixth Circuit rejected that argument, and held that an officer is "not required" to inquire into facts and circumstances in an effort to discover if the suspect has an affirmative defense. *Id.* at 873. But here no one is faulting Sirmons and Mills *for failing to so inquire*, for failing to *discover* that Williams was pregnant and bleeding. Rather, Sirmons and Mills knew she was pregnant and bleeding and in need of emergency care. The issue is, what should they have done with that information once in their possession? *Fridely* does not speak to that question. *Estate of Dietrich*, and the lower court decision, do speak to that question.

It is well settled that an officer cannot arrest an individual if he does not have probable cause, or even arguable probable cause, to effect that arrest. The Eleventh Circuit relied on that well-settled principle in affirming the district court's decision to deny Sirmons and Mills qualified immunity for their arrest of Williams. For this reason, no split in the circuits was created by the lower court's decision and the Petition for Writ of Certiorari should be denied.

II. THE ELEVENTH CIRCUIT'S DECISION IS NOT CONTRARY TO THIS COURT'S QUALIFIED IMMUNITY PRECEDENT.

Much of this section of Sirmons and Mills's Petition for Writ of Certiorari rehashes the prior section of the brief. The argument here, such as it is, suggests that officers will in some cases *reasonably*, but mistakenly, conclude that probable cause is present and subsequently not be held personally liable. *See Anderson v. Creighton*, 483 U.S. 635 (1987). From that *Anderson* seed grew the flower of "arguable probable cause" in subsequent case law; in this case, Sirmons and Mills suggest that "certainly arguable probable [cause] remained to believe that [Williams] had committed at least one of the crimes for which she was arrested" when she was arrested. (Pet. at 17.) That argument has several flaws, any one of which is fatal.

First, no reasonable officer has been advanced to defend Sirmons and Mills. In fact, the Sheriff "disciplined Sirmons and Mills for [the] misconduct" underlying this case. (Pet. App. B at 23a.) It is respectfully suggested that if a reasonable officer could have believed tackling and slamming the pregnant and bleeding Melanie Williams to the ground in an emergency room was defensible, then the Sheriff would not have suspended these two officers for ten days. (Doc. 23-12 at 1, 7.)

Second, the district court and the Eleventh Circuit considered that question and rejected out of

hand the supposition that a reasonable officer could have behaved in the manner which Sirmons and Mills behaved when confronted with Williams and her pre-term labor. In fact, the Eleventh Circuit agreed with the district court's conclusion that Sirmons and Mills's behavior was "reprehensible." When a district court, a panel of a circuit court, and the *en banc* circuit court all conclude that Sirmons and Mills's conduct was indefensible, it is impossible to say that any reasonable officer could think otherwise.

And finally, the opinions Sirmons and Mills offer this Court to justify this arrest as supported by "arguable probable cause" are not on-point or persuasive. Neither *Sullivan v. City of Pembroke Pines*, 161 Fed. Appx. 906 (11th Cir.2006) nor *Zivojinovich v. Barner*, 525 F.3d 1059 (11th Cir.2008) describe circumstances where the arrestee was facing serious medical consequences requiring conduct that otherwise could be considered unlawful.

Where both the federal courts and the Sheriff of Jacksonville have concluded that Sirmons and Mills acted without lawful authority in arresting Williams, one would be surprised to find any precedent that conflicts with the decision in the instant case. Sirmons and Mills cannot offer Supreme Court case law in conflict with the instant case because there is none.

III. THIS CASE DOES NOT HAVE SIGNIFICANT PUBLIC POLICY IMPLICATIONS FOR LAW ENFORCEMENT AND CRIME PREVENTION.

This case stands for a very simple, defensible proposition of law that does not even arguably have "significant public policy implications," at least in any negative sense. Simply put, when faced with a pregnant woman who complies with an initial traffic stop and immediately asserts she is pregnant, bleeding, and in need of emergency care, and behaves in all ways consistently with her assertions, law enforcement officers must refrain from jeopardizing the woman's, or her child's, life. Qualified immunity continues to afford an "accommodation for reasonable error[.]" *Hunter v. Bryant*, 502 U.S. 224, 229 (1991). That principle is unchanged. The error here *was unreasonable, and the law does not require accommodation for unreasonable error*. After the lower court's decision, law enforcement officers are still not required to "err always 'on the side of caution' because they fear being sued." *Id. quoting Davis v. Scherer*, 468 U.S. 183, 196 (1984). Instead, officers are expected – as they always have been – to act reasonably. Sirmons and Mills behaved reprehensibly, and effected an unlawful arrest on a pregnant woman in immediate need of medical care. The only public policy implication of this case for law enforcement is a positive one: don't act reprehensibly.

CONCLUSION

The Eleventh Circuit affirmed the district court's conclusion that Sirmons and Mills illegally arrested Melanie Williams based on well-settled principles of law, dating all the way back to the 1920's. The decision does not create a conflict between or among the circuit courts, and no other reason to grant the Petition for Writ of Certiorari exists. For all the reasons stated above and in the lower court decisions, Williams respectfully prays that the Supreme Court deny the Petition for Writ of Certiorari and refuse to hear the case on the merits.

Respectfully Submitted,

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